

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2013 AUG 12 AM 11:15

JUAN ANTHONY REYES JR.,

DEPUTY CLERK *CAF*

Petitioner,

CV NO.: 5:13-CV-173-C

vs.

MOTION FOR RECONSIDERATION

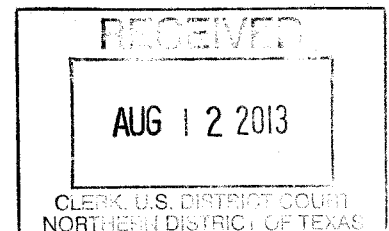
UNITED STATES OF AMERICA,

Respondents.

NOW COMES, JUAN ANTHONY REYES, in pro se and without the benefit of counsel and does herein request in pro se upon his Motion for Reconsideration, " of the transferring the cause, per order Dated August 01, 2013 to the United States Court of Appeals for the Fifth Circuit Court of Appeals. (See Attached Order)

For Cause: This Court determined that the Petitioner's Section § 2255(f)(3) Motion was A "second or Successive Motion, Application to Vacate, Set Aside and or Correct Sentence." The Petitioner avers that his motion under 2255(f)(3) is **not** a Second or Successive Motion under Title 28 U.S.C. 2255(f)(2) and 28 U.S.C. Section 2255(h)(2).

Furthermore, this Court was to give due notice before it's recharacterization that it was going to recharacterize Reye's



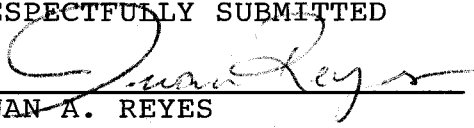
Motion as a Second or Successive Application and transfer it to the United States Court of Appeals for the Fifth Circuit.

Because Reye's avers that he is entitled to file a Section § 2255(f)(3) motion with this Court, he does not need permission to file a Second or Successive Motion, because 28 U.S.C. Section § 2255(f)(3) gives this Court explicit jurisdiction to entertain Reye's claims. See Weigard v. United States, 380 F.3d 890, 892 (6th Cir 2004); United States v. Tuten, 2008 U.S. Dist Lexis 90896 (4th Dist 2008) see also Dodd v. United States, 365 F.3d 1273, 1278 (11th Cir 2004)(noting that 'every circuit to consider this issue has held that a Court other than the supreme Court can make a retroactivity decision for purposes of Section 2255(f)(3). aff'd, 545 U.S. 353, 125 S.Ct 2478, 162 L.Ed 2d 343 (2005); United State v. Swinton, 33 F. 3d 481, 486-87 (3d Cir 2003); see also; Fischer v. United States, 285 F.3d 596, 599-600 (7th Cir 2002); United States v. Lopez, 248 F.3d 427 (5th Cir 2001).

Wherefore, this Court's decision to transfer the case to the Fifth Circuit was in err and should have at most given Reye's a Castro, Order.

WHEREFORE, REYES request that this Court reconsider it transferring the cause to the Fifth Circuit Court of Appeals and entertain jurisdiction over Reyes 28 U.S.C. Section 2255 (f)(3) Motion in light of the arguments set forth therein.

RESPECTFULLY SUBMITTED


JUAN A. REYES
Reg No.; 31910-177
FCI WILLIAMSBURG
P.O.Box 340
Salters, S.C. 29590

Petitioner/pro se


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed
to the following parties:

Richard B. Roper
United States Attorney
C/o Angie L. Henson
Assistant United States Attorney
Burnett Plaza, Suite 1700
801 Cherry Street Unit 4
Fort Worth Texas 76102-6897

on this 9th day of August 2013 by regular via U.S. Mails postage
pre paid mails.

RESPECTFULLY SUBMITTED


JUAN ANTHONY REYES
FCI WILLIAMSBURG
P.O.Box 340
Salters, S.C. 29590

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

JUAN ANTHONY REYES, JR.,

Movant,

V.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION NO.

5:13-CV-173-C

CRIMINAL NO.

5:05-CR-083-02-C

ORDER

On July 31, 2013, Juan Anthony Reyes, Jr. ("Movant") filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody. Movant previously filed a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 on August 27, 2007, in Civil Action No. 5:07-CV-185-C. Because Movant has not received permission from the United States Court of Appeals for the Fifth Circuit to file a second or successive motion to vacate, this Court is without jurisdiction to consider Movant's Motion filed July 31, 2013.

IT IS, THEREFORE, ORDERED that the above-styled and -numbered cause is **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit.

Dated August 1, 2013.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE

Name: Juan A. Reyes

Register Number: 31910-177

F.C.I. Williamsburg

Inmate Mail

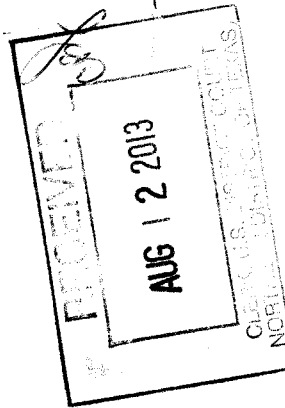
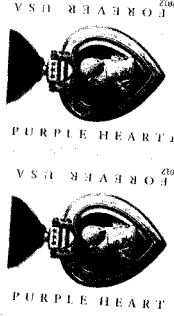
P.O. Box 340

Salters, SC 29590

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OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
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Legal Mail

⇄ 31910-177 ⇄
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